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DEPARTMENT OF COMMERCE

International Trade Administration

(C-201-846)

Sugar from Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: Effective June 30, 2017.

SUMMARY: The Department of Commerce (the Department) and a representative of the Government of Mexico (GOM) have signed an amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Suspension Agreement). The amendment to the CVD Suspension Agreement modifies the definitions for sugar from Mexico, modifies the restrictions of the volume of direct or indirect exports to the United States of sugar from all Mexican producers/exporters, and provides for enhanced monitoring and enforcement mechanisms.

FOR FURTHER INFORMATION CONTACT: Sally Craig Gannon or David Cordell at (202) 482-0162 or (202) 482-0408, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2014, the Department initiated a countervailing duty investigation under section 702 of the Tariff Act of 1930, as amended (the Act), to determine whether manufacturers, producers, or exporters of sugar from Mexico receive subsidies.¹ On August 25, 2014, the Department preliminarily determined that countervailable subsidies are being provided to producers and exporters of sugar from Mexico and aligned the final countervailing duty determination with the final antidumping duty determination.²

The Department and the GOM signed the CVD Suspension Agreement on December 19, 2014.³

On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified the Department that they had petitioned the International Trade Commission (ITC) to conduct a review of the CVD Suspension Agreement under section 704(h) of the Act to determine whether the injurious effects of the imports of the subject merchandise are eliminated completely by the CVD Suspension Agreement. On March 19, 2015, in a unanimous vote, the ITC found that the CVD Suspension Agreement eliminated completely the injurious effects of imports of sugar from Mexico.⁴ As a result of the ITC's determination, the CVD Suspension Agreement remained in effect, and on March 27, 2015, the Department, in accordance with section 704(h)(3) of the Act, instructed U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of all entries of sugar from Mexico and refund all cash deposits.

¹ See *Sugar from Mexico: Initiation of Countervailing Duty Investigation*, 79 FR 22790 (April 24, 2014).

² See *Sugar from Mexico: Preliminary Affirmative Countervailing Determination and Alignment of Final Countervailing Determination with Final Antidumping Duty Determination*, 79 FR 51956 (September 2, 2014).

³ See *Sugar From Mexico: Suspension of Countervailing Investigation*, 79 FR 78044 (December 29, 2014).

⁴ See *Sugar from Mexico; Determinations*, 80 FR 16426 (March 27, 2015).

Notwithstanding issuance of the CVD Suspension Agreement, pursuant to requests by domestic interested parties, the Department continued its investigation and made an affirmative final determination that countervailable subsidies were being provided to exporters and producers of sugar from Mexico.⁵ In its *Final Determination*, the Department calculated countervailable subsidy rates of 43.93 percent for Fondo de Empresas Expropiadas del Sector Azucarero (FEESA), 5.78 percent for Ingenio Tala S.A. de C.V. and certain affiliated sugar mills of Grupo Azucarero Mexico S.A. de C.V. (collectively, the GAM Group), and 38.11 percent for producers and exporters that were not individually investigated. The Department stated, in its *Final Determination*, that it would “not instruct CBP to suspend liquidation or collect cash deposits calculated herein unless the {CVD} Suspension Agreement is terminated.”⁶ The ITC subsequently made an affirmative determination of material injury to an industry in the United States by reason of imports of sugar from Mexico.⁷

Since June 2016, the Department and GOM have held consultations regarding the CVD Suspension Agreement to address concerns raised by the domestic industry and to ensure that the CVD Suspension Agreement meets all of the statutory requirements for a suspension agreement, *e.g.*, that suspension of the investigation is in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring is practicable. On June 14, 2017, the Department and the GOM initialed a draft amendment to the CVD Suspension Agreement. The Department invited interested parties to provide written comments on the

⁵ See *Sugar From Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278 (May 4, 2015); *Sugar From Mexico: Final Affirmative Countervailing Duty Determination*, 80 FR 57337 (September 23, 2015) (*Final Determination*).

⁶ *Final Determination*, 80 FR at 57338.

⁷ See *Sugar From Mexico*, 80 FR 70833 (November 16, 2015) (*Final ITC Determination*).

proposed amendment by June 21, 2017, and rebuttal comments by June 26, 2017.⁸ On June 17, 2017, the Department released a memorandum explaining how the draft amendment, as integrated with the CVD Suspension Agreement (the draft amended CVD Suspension Agreement) meets the requirements of section 704(c) of the Act and invited interested parties to provide written comments by no later than the close of business on June 23, 2017, with rebuttal comments due no later than the close of business on June 26, 2017.⁹

Scope of Agreement

See Section I, Product Coverage, of the CVD Suspension Agreement.

Analysis of Comments Received

We received comments on the draft amendment from the International Sugar Trade Coalition, the Australian Sugar Industry Alliance, CSC Sugar LLC, the Corn Refiners Association, the Organic Trade Association, Archer Daniels Midland Company, the American Sugar Coalition, Imperial Sugar Company, the Government of Canada, the Sugar Users Association, and the Governments of Barbados, Belize, Dominican Republic, Guyana, and Jamaica. We received rebuttal comments on the draft amendment from Cámara Nacional de Las Industrias Azucarera y Alcohólera (Mexican Sugar Chamber), the American Sugar Coalition, the Government of Mexico, and Zucarmex, S.A. de C.V. and Zucrum Foods LLC. We did not receive comments on the draft statutory memorandum. In reaching a final amendment to the CVD Agreement, the

⁸ *See* Memorandum entitled “Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico,” dated June 14, 2017 and Memorandum entitled “Placing Press Release on the Record of the Proceeding,” dated June 30, 2017.

⁹ *See* Memorandum from P. Lee Smith, Deputy Assistant Secretary for Policy and Negotiations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled “Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments,” dated June 16, 2017.

Department has taken into account all comments and rebuttal comments submitted on the record of the suspension agreement proceeding and has made changes, where warranted, to the June 14, 2017 draft CVD amendment based upon those comments. The Department expects to place its written analysis of the changes made and response to comments on the record of the suspension agreement proceeding no later than July 14, 2017.

Amendment to CVD Suspension Agreement

The Department consulted with the GOM and the petitioners¹⁰ and has considered the comments submitted by interested parties with respect to the draft amendment to the CVD Suspension Agreement. On June 30, 2017, after consideration of the interested party comments received, Wilbur L. Ross, Jr., Secretary of Commerce, and Juan Carlos Baker Pineda, Subsecretario de Comercio Exterior, Secretaría de Economía, signed a finalized amendment to the CVD Suspension Agreement. The amendment, as integrated with the CVD Suspension Agreement (the amended CVD Suspension Agreement), allows for exports of Mexican sugar to the United States in accordance with the collective terms therein.

In accordance with section 704(c) of the Act, we have determined that extraordinary circumstances, as defined by section 704(c)(4) of the Act, exist with respect to the amended CVD Suspension Agreement. We have also determined that the amended CVD Suspension Agreement is in the public interest and can be monitored effectively, as required under section 704(d) of the Act.

For the reasons outlined above, we find that the amended CVD Suspension Agreement

¹⁰ Petitioners are the American Sugar Coalition and its individual members: American Sugar Cane League, American Sugar Refining, Inc., American Sugarbeet Growers Association, Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and United States Beet Sugar Association.

meets the criteria of section 704(c) and (d) of the Act.

The terms and conditions of the amendment to the CVD Suspension Agreement, signed on June 30, 2017, are set forth in the Amendment to the CVD Suspension Agreement, which is attached in Annex 1 to this notice.

Administrative Protective Order Access

The administrative protective order (APO) the Department granted in the suspension agreement segment of this proceeding remains in place and effective for the amended CVD Suspension Agreement. All new parties requesting access under the APO currently in effect to business proprietary information submitted during the administration of the amended CVD Suspension Agreement must submit an APO application in accordance with the Department's regulations currently in effect.¹¹

¹¹ See section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305, and 351.306.

We are issuing and publishing this notice in accordance with section 704(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Dated: June 30, 2017

ANNEX 1: AMENDMENT TO AGREEMENT SUSPENDING THE COUNTERVAILING DUTY INVESTIGATION ON SUGAR FROM MEXICO

The Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (Agreement) signed by the United States Department of Commerce (the Department) and the Government of Mexico (GOM) on December 19, 2014, is amended, as set forth below (Amendment).

If a provision of the Agreement conflicts with a provision of this Amendment, the provision of the Amendment shall supersede the provision of the Agreement to the extent of the conflict. All other provisions of the Agreement and their applicability continue with full force.

The Department and the GOM hereby agree as follows:

Section II (“Definitions”) is amended as follows:

Section II.D is replaced with:

“Effective Date of the Agreement” means the date on which the Department and the GOM signed the Agreement. Additionally, the “Effective Date of the Amendment” means the date on which the Department issues its next calculation pursuant to Section V.B of the Agreement and, as such, means that the Amendment applies to all contracts for Sugar from Mexico for the October 1, 2017 through September 30, 2018 Export Limit Period, and to all contracts for Sugar from Mexico (regardless of Export Limit Period) exported from Mexico on or after October 1, 2017.

Section II.K is replaced with:

“Other Sugar” means

- a. Sugar at a polarity of less than 99.2, as produced and measured on a dry basis;
- b. Where such Sugar is Additional U.S. Needs Sugar, as defined in Section II.U, Sugar at a polarity of less than 99.5, as produced and measured on a dry basis; and,
- c. In the event that Section V.B.4.d is exercised, Sugar at a polarity specified by USDA that is below 99.5, as produced and measured on a dry basis.

Such Other Sugar must be exported to the United States loaded in bulk and freely flowing (*i.e.*, not in a container, tote, bag or otherwise packaged) into the hold(s) of an ocean-going vessel. To be considered as Other Sugar, if Sugar leaves the Mexican mill in a container, tote, bag or other package (*i.e.*, is not freely flowing), it must be emptied from the container, tote, bag or other package into the hold of the ocean-going vessel for exportation. All other exports of Sugar from Mexico that are not transported in bulk and freely flowing in the hold(s) of an ocean-going vessel will be considered to be Refined Sugar for purposes of the Export Limit or Additional U.S. Needs Sugar, regardless of the polarity of that Sugar.

Section II.L is replaced with:

“Refined Sugar” means

- a. Sugar at a polarity of 99.2 and above, as produced and measured on a dry basis;
- b. Sugar considered to be Refined Sugar under Section II.K;
- c. Where such Sugar is Additional U.S. Needs Sugar as defined in Section II.U, Sugar at a polarity of 99.5 and above, as produced and measured on a dry basis; and
- d. In the event that Section V.B.4.d is exercised, Sugar at a polarity specified by USDA that is 99.5 or above, as produced and measured on a dry basis.

New Section II.U is added as follows:

“Additional U.S. Needs Sugar” means the quantity of Sugar allowed to be exported, over and above the Export Limit calculated under Section V.B.3, to fill a need identified by USDA in the U.S. market for a particular type and quantity of Sugar, and offered to Mexico pursuant to Section V.B.4.c.

Section V (“Export Limits”) is amended as follows:

Section V.B - the first sentence of the first paragraph is amended as follows (*changes in italics*):

The Export Limit for each Subsequent Export Limit Period will be *fifty (50)* percent of the Target Quantity of U.S. Needs as calculated based on the July WASDE preceding the beginning of the Export Limit Period.

Section V.B.4 is replaced with the following:

4. Increases to the Export Limit

- a.** Prior to April 1 of any Export Limit Period, if USDA notifies the Department, in writing, of any additional need for Sugar, the Department shall, consistent with 704(c) of the Act, increase the Export Limit to address potential shortages in the U.S. market based on USDA's request.
- b.** Starting in March, within 10 days following the publication of each WASDE report during a given Export Limit Period, the Department agrees that it shall consult with USDA and the GOM regarding any potential increase in the Export Limit on or after April 1. Following each consultation with the GOM, the GOM will notify the Department within 10 days of (1) the extent to which the GOM has issued export licenses for Other Sugar and Refined Sugar to fulfill 100 percent of the Target Quantity of U.S. Needs; (2) the quantity of Other Sugar and Refined Sugar that has been exported under such licenses, and (3) the nature and quantity of the Sugar that Mexico can supply, with supporting documentation for the foregoing, and the Department shall notify USDA.
- c.** Pursuant to such consultations, and upon receiving notice from USDA in writing of a need in the U.S. market for a particular type and quantity of additional Sugar that Mexico has indicated it can supply, the Department shall: (1) request written confirmation from the GOM that Mexico can and will supply 100 percent of the Target Quantity of U.S. Needs (as calculated pursuant to Section V.B.3 based on the March WASDE); and (2) upon receiving such confirmation, increase the Export Limit, consistent with 704(c) of the Act, by an amount equal to 100 percent of such particular type and quantity of sugar identified by USDA (hereinafter "Additional U.S. Needs Sugar"). When such Additional U.S. Needs Sugar is requested by USDA, and in turn offered to Mexico by the Department, the definitions for Other Sugar and Refined Sugar in Section II.K.a and Section II.L.a, respectively, shall apply prior to May 1 of any Export Limit Period, and, on or after such date, the definition in Section II.K.b and Section II.L.c, respectively, shall apply. Such Additional U.S. Needs Sugar shall comply with the applicable definitions and requirements in the Agreement, for Other Sugar and Refined Sugar, respectively.
- d.** In the event of an extraordinary and unforeseen circumstance that seriously threatens the economic viability of the U.S. sugar refining industry, USDA may specify the polarity of the amount of additional Sugar specifically needed to rectify such extraordinary and unforeseen circumstance. To the extent possible under the circumstances, USDA will consult with the GOM and other interested parties. When such additional Sugar is requested by USDA under this Section V.B.4.d, and in turn offered to Mexico by the Department, the definitions for Other Sugar and Refined Sugar in Section II.K.c and Section II.L.d, respectively, shall apply.

- e. If the Department has imposed penalties for polarity non-compliance under Section VIII.B.4 in a given Export Limit Period, Mexico may not be eligible for Additional Needs U.S. Sugar.
- f. Any additional Sugar may be limited to Other Sugar or Refined Sugar, or any combination thereof, as specified by USDA. For greater certainty, Section V.C does not apply to any additional Sugar exported by Mexico pursuant to this Section V.B.4.

Section V.C is amended as follows:

Section V.C.2 is amended as follows (changes in italics):

No more than 55 percent of U.S. Needs calculated in each *September* and effective January 1 may be exported to the United States during the period October 1 through March 31, *unless that amount is less than or equal to the amount calculated under Section V.C.1, in which case the amount calculated under Section V.C.1 will continue to apply until March 31.*

Section V.C.3 is amended as follows (changes in italics):

Refined Sugar may account for no more than *30* percent of the exports during any given Export Limit Period.

Section VI (“Implementation”) is amended as follows:

Section VI.A - the following sentences are added at the end of the paragraph:

On the Effective Date of the Amendment, presentation of an Export License is required as a condition for entry of Sugar from Mexico into the United States. The GOM will issue amended regulations to implement the Amendment.

Section VI.B – the first sentence is amended as follows (changes in italics) and a new sentence is inserted after the first sentence (in italics):

Export Licenses will be *contract-specific* and must contain the information identified in Appendix I. *Export Licenses issued by the GOM must, in addition to specifying whether or not exported Other Sugar is for further-processing, also specify the identity of the entity that is further processing the Other Sugar, if known.*

Section VIII.B (“Compliance Monitoring”) is amended as follows:

Section VIII.B.4 is added as follows:

4. Penalties for Polarity Non-Compliance of this Agreement and/or Price Non-Compliance of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement): The Department will review documentation regarding polarity testing that is placed on the record of this Agreement, in accordance with Section VII.C.6 of the AD Agreement, to determine whether there have been imports that are inconsistent with the provisions of this Agreement and Sections II.F, II.H, VII.C.6 and Appendix I of the AD Agreement. Where the Department finds that polarity test results of an entry of Sugar are not compliant with the Agreement’s or AD Agreement’s applicable definition of Other Sugar or Sugar was sold at prices that are less than the Reference Prices established in Appendix I of the AD Agreement: (1) the Department shall deduct two (2) times the quantity of that entry from Mexico’s Export Limit, and (2) the GOM will, in turn, deduct that same quantity from the specific producer’s/exporter’s Export Limit allocation.

- a. The penalty will be applied on the date the Department notifies the GOM in writing of such non-compliance.
- b. If Other Sugar that enters during the period from October 1 through the day before the publication of the July WASDE tests at or above 99.2 polarity (or at or above 99.5 or other polarity in the case of Additional U.S. Needs Sugar), then the Department will reduce Mexico’s current Export Limit by two (2) times the quantity of that entry. The Export Limit determined under Section V.B.2 and V.B.3 will be correspondingly reduced by the same amount. At the time of the March WASDE when the Target Quantity of U.S. Needs is determined, and up to the day before the publication of the July WASDE, USDA may exercise its authority to seek to fill from other countries the particular type and quantity of sugar needed in the U.S. market to address the penalty amount by which Mexico’s *current-year* Export Limit was reduced.
- c. If Other Sugar that enters during the period from the day of the publication of the July WASDE through September 30 tests at or above 99.2 polarity (or at or above 99.5 or other polarity in the case of Additional U.S. Needs Sugar), then the Department will reduce the Export Limit for the next Export Limit Period by two (2) times the quantity of

that entry. That reduction will be applied to each revision of the Export Limit under Section V.B.1, V.B.2 and V.B.3. If Mexico's *next fiscal year* Export Limit is reduced, USDA may exercise its authority to seek to fill from other countries the particular type and quantity of sugar needed in the U.S. market to address the penalty amount by which Mexico's Export Limit was reduced.

- d. If the Department finds that issues with meeting the polarity, testing or compliance requirements of this Agreement continue to arise, the Department can at any time terminate the Agreement under Section XI.B. Apart from termination, the Department may take additional steps to ensure compliance with the terms of this Agreement and the AD Agreement as appropriate, including reducing the Export Limit up to three (3) times the quantity of entries that do not comply with this Agreement or the AD Agreement.

Appendix I is amended as follows (changes in italics):

The GOM will issue *contract-specific* Export Licenses to Mexican entities that shall contain the following fields:

At Appendix I, the following will be added to the Export License:

12. Contract Identification Information: Indicate the contract identification information with which the license is associated.

At Appendix II, the following will be added to the information reported to the Department:

12. Contract Identification Information: Indicate the contract identification information with which the license is associated.
13. Date of Export: Indicate the date of export of the Sugar from Mexico to the United States.

It is acknowledged that reported information may need to be updated from time to time to reflect corrected information from customs authorities.

Signed in Washington, D.C., on June 30, 2017.

For the U.S. Department of Commerce:

Wilbur L. Ross, Jr.
Secretary of Commerce
U.S. Department of Commerce

For the Government of Mexico:

Juan Carlos Baker Pineda
Subsecretario de Comercio Exterior
Secretaría de Economía
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